

LUD 5684.2 CIP (10106926)

REMARKS

With respect to the Restriction Requirement, applicants elect Group I, i.e., claims 1-12, 17 and 18. Additionally, claims 31-33 have been added. Claim 31 further defines the nucleotide acid molecule of claim 1, and claims 32 and 33 further define claim 3. No new matter has been presented herein.

Part 2 of the restriction requirement does not require election of a nucleotide sequence. Hence, it is not seen why applicants must elect an amino acid sequence if they elect Group I, which the examiner clearly states is an invention distinct from a protein. Clarification is requested. Should the examiner have intended restriction between nucleic acid molecules, this must be stated in the next action.

Notwithstanding the lack of a restriction requirement regarding nucleic acid molecules, applicants elect SEQ ID NO: 5, although this requirement, if made, should be withdrawn.

The examiner states that:

Each of SEQ ID NOs is a unique and separately patentable sequence, requiring a unique search of the prior art. Searching all of the sequences in a single patent application would constitute an undue search burden on the examiner and the USPTO's resources because of the non-coextensive nature of these searches.

Applicants respectfully disagree and note that these statements do not reflect the practice required by the MPEP.

Nucleotide sequence SEQ ID NO: 5 is a splice variant of SEQ ID NO: 10. (See, e.g., specification pg. 5, lines 3-8). SEQ ID NO: 5 is included completely within SEQ ID NO: 10. These nucleotide sequences differ from one another by only 96 nucleotides, i.e., SEQ ID NO: 5 is 2271 nucleotides long and SEQ ID NO: 10 is 2366 nucleotides long. Thus, SEQ ID NO: 5 shares at least 90% identity with SEQ ID NO: 10 ($2271/2366 = .96$). Consequently, conducting a search of these two sequences would not constitute an undue search burden on the examiner, because any search of either SEQ ID NO: 5 or 10 would de facto locate the other.

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Furthermore, according to the MPEP 803.04:

Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the office, the Commissioner has decided...[to] permit a reasonable number of such nucleotide sequences to be claimed in a single application.

Additionally, the MPEP states that "ten sequences constitute a reasonable number for examination purposes."

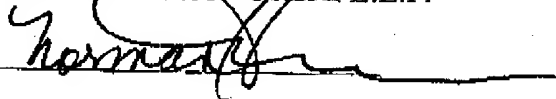
Here, the claims of the elected group contain only two sequences, which is clearly within the Commissioner's guidelines.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. LUD-5684.2-CIP from which the undersigned is authorized to draw.

Respectfully submitted,

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